

Small Business Administration

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collected from the CSA when the payments are made.

(4) *Late fees.* Loan payments received after the 15th of each month may be subject to a late payment fee of 5 percent of the late payment or \$100, whichever is greater. These fees will be collected by the CSA on behalf of the CDC; and

(5) *Assumption fee.* Upon SBA's written approval, a CDC may charge an assumption fee not to exceed 1 percent of the outstanding principal balance of the loan being assumed.

(b) *CSA fees.* The CSA may charge an initiation fee on each loan and a monthly servicing fee under the terms of the Master Servicing Agreement.

(c) *Other agent fees.* Agent fees and charges necessary to market and service Debentures and Certificates may be assessed to the Borrower or the investor. The fees must be approved by SBA and published periodically in the FEDERAL REGISTER.

(d) *SBA fees.* (1) SBA charges a 0.5 percent guarantee fee on the Debenture.

(2) For loans approved by SBA after September 30, 1996, SBA charges a fee of not more than 0.9375 percent annually on the unpaid principal balance of the loan as determined at five-year anniversary intervals.

(e) *Miscellaneous fees.* A funding fee not to exceed 0.25 percent of the Debenture may be charged to cover costs incurred by the trustee, fiscal agent, transfer agent.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2119, Jan. 13, 1999]

§ 120.972 Third Party Lender participation fee and Development Company fee.

(a) *Participation fee.* For loans approved by SBA after September 30, 1996, SBA must collect a one-time fee from the Third Party Lender equal to 50 basis points on its total participation in a Project when the Third Party Lender occupies a senior credit position to SBA in the project.

(b) *Development company fee.* For loans approved by SBA after September 30, 1996, SBA must collect an annual fee from the CDC equal to 0.125 percent of the outstanding principal balance of the debenture. The fee must

be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the Borrowers.

[64 FR 2119, Jan. 13, 1999]

§ 120.973 Oversight and evaluation of CDCs and ADCs.

SBA may conduct an operational review of a CDC or ADC. The SBA Office of Inspector General may conduct, supervise or coordinate audits pursuant to the Inspector General Act. The CDC or ADC must cooperate and make its staff, records, and facilities available.

[61 FR 3235, Jan. 31, 1996. Redesignated at 64 FR 2119, Jan. 13, 1999]

CDC TRANSFER, SUSPENSION AND REVOCATION

§ 120.980 Transfer of CDC to ADC status.

SBA shall transfer to ADC status any CDC that fails to meet the activity level required by SBA, on average over two consecutive fiscal years. SBA shall notify the CDC in writing of the action and of the opportunity for a hearing pursuant to part 134 of this chapter at least 10 business days prior to the transfer. During the pendency of a hearing, SBA's action will remain in effect.

§ 120.981 Voluntary transfer and surrender of CDC certification.

A CDC may not transfer its certification or withdraw from the 504 program without SBA's consent. The CDC must provide a plan to SBA to transfer its portfolio. The portfolio may only be transferred with SBA's written consent. If a CDC desires to withdraw from the 504 program, it must forfeit its portfolio to SBA. SBA may conduct an audit of the transferring or withdrawing CDC.

§ 120.982 Correcting CDC servicing deficiencies.

SBA may require corrective action, including the transfer of existing or pending financings to another CDC in good standing. SBA must notify the CDC in writing of any servicing, reporting or collection deficiencies and

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the corrective actions to be taken. SBA may instruct the CSA to withhold service and late fees and may assess the CDC up to \$250 per day for expenses incurred by SBA to correct the deficiencies. If non-compliance continues for 90 days, SBA may take the fees as compensation for its efforts to obtain compliance.

§ 120.983 Transfer of CDC servicing to SBA or another CDC.

If a CDC fails to correct servicing deficiencies, or is unable or unwilling to service its portfolio, SBA may assume the servicing or require the transfer of all or part of the CDC's portfolio to another CDC within or adjoining the deficient CDC's Area of Operations. If there is no suitable CDC, SBA may approve a transfer to another entity. Future service fees from transferred loans will be paid to the transferee. In addition, the CDC's processing authority will be temporarily suspended.

§ 120.984 Suspension or revocation of CDC certification.

(a) *Suspend or revoke.* The AA/FA may suspend or revoke the CDC's certification if a CDC:

- (1) Violates a statute, an SBA regulation, or the terms of a Debenture, authorization, or agreement with SBA;
- (2) Makes a material false statement, knowingly misrepresents, or fails to state a material fact;
- (3) Fails to maintain good character;
- (4) Fails to operate according to prudent lending standards;
- (5) Fails to correct servicing, collection, reporting, or other deficiencies; or
- (6) Is unable or unwilling to operate in accordance with the requirements of this part.

(b) *Transfer portfolio.* Upon suspension or revocation, the CDC must transfer its remaining portfolio and any 504 applications or financings in process to another CDC designated or approved by SBA. If a pending 504 financing is completed after a transfer, any deposit must also be transferred. Any fees must be apportioned by SBA between the two CDCs in proportion to services performed.

(c) *Provide written notice.* SBA must give written notice to the CDC at least

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10 business days prior to the effective date of a suspension or revocation, informing the CDC of the opportunity for a hearing pursuant to part 134 of this chapter.

ENFORCEABILITY OF 501, 502 AND 503 LOANS AND OTHER LAWS

§ 120.990 501, 502 and 503 loans.

SBA has discontinued loan programs for 501, 502, and 503 loans. Outstanding loans remain under these programs, and Borrowers, CDCs, and SBA must comply with the terms and conditions of the corresponding notes and Debentures, and the regulations in this part in effect when the obligations were undertaken or last in effect, if applicable.

§ 120.991 Effect of other laws.

No State or local law may preclude or limit SBA's exercise of its rights with respect to notes, guarantees, Debentures and Debenture Pools, or of its enforcement rights to foreclose on collateral.

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

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